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Gazette

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th September 2007

No. 11102—II/I(S)-4/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th August 2007 in Industrial Disputes Case No. 10/2006 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of Director, M/s Pioneer Metal (I) Private Ltd., Industrial Estate, Jharsuguda, district Jharsuguda and its workman Shri Pravat Kumar Mohanty, Watchman M/s Pioneer Metal (I) Private Ltd., Industrial Estate, P. O./District Jharsuguda was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT

SAMBALPUR

INDUSTRIAL DISPUTES CASE NO. 10 OF 2006

Dated the 18th August 2007

Present:

Shri P. K. Majapatro, LL.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between:

The Management of the Director,
M/s Pioneer Metal (I) Pvt. Ltd.,
Industrial Estate, Jharsuguda,
District Jharsuguda.

First Party—Management

And

Its Workman,
Shri Pravat Kumar Mohanty,
Watchman, M/s Pioneer Metal (I)
Pvt. Ltd., At Industrial Estate,
P.O. Jharsuguda, Dist. Jharsuguda.

Second Party—Workman

Appearances:

Shri Sital Prasad Shivhare,
Sr. Executive.

.. For the First Party—Management

Self

.. For the Second Party—Workman

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947, vide memo No. 4495 (5), dated the 6th June 2006 for adjudication of the disputes as scheduled below:

"Whether the termination of services of Shri Pravat Kumar Mohonty, Watchman by M/s Pioneer Metal (I) Pvt. Ltd., Industrial Estate, Jharsuguda with effect from the 13th June 2005 is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The claim statement of the workman is very cryptic in nature. In the first claim statement which was transmitted by post. He has averred that he was working under the management from the 24th July 2003 and without any relevant documents, he was dismissed from service from the 13th June 2005 and though after his dismissal, he had approached many times to the management for his reinstatement, but the same was not accepted and even the conciliation proceeding also ended with a failure report as because the management did not obey the opinion of the District Labour Officer who was the Conciliator. In it, the workman has further mentioned that he was working for 12 hours daily. Along with it, the workman has filed xerox copies of attendance card's. Then on the 28th July 2006 (case was not posted on that day), the workman has filed another claim statement by mentioning that on the 24th July 2003 he was inducted under the management with the starting scale of pay of Rs. 1,000 per month and subsequently it was enhanced and from April, 2005 to June of that year, he was receiving Rs. 2,000, but while terminating him, the statutory notice or other benefits were not given to him. In the second statement of claim, the workman has further mentioned that he was not provided with minimum wages approved by the Labour & Employment Department and then he has requested this Court for payment of his wages and reinstatement in service. To sum up in this I. D. Case the claim of the workman is to reinstate him in service with full back wages.

3. The management side being represented by Shri Sital Prasad Shivhare, Senior Executive of the management has contested the above claim of the workman. It is the specific case of the management that the workman had joined in his duty with effect from the 1st January 2005 with a consolidated pay of Rs. 1,500 per month and then it was enhanced to Rs. 2,000 per month w. e. f. the 1st April 2005, but the workman did not perform his duties properly, as a result, in the intervening night of the 12th June 2005 and the 13th June 2005 there was theft from the factory premises and without informing the incident to the management, he simply left the factory and when the investigation of the theft case started on the strength of the report lodged by them, he absconded from his service place from the 13th June 2005 onwards and then moved the District Labour Officer with some cooked up versions. It is also the case of the management that it is not a case of retrenchment as complained by the workman and rather it comes within the exception clause available to retrenchment i. e. 2 (oo) (bb) of the I. D. Act. The representative of management has also stated that the appointment was for a temporary period of six months and then it was not renewed, as a result, it be treated as non-renewal of contract of employment and not a case of retrenchment. In Para. 4, the authorised representative of the management has denied the stand of the workman and further averred that the documents filed by him are manufactured documents and he has created it by using the unused past attendance formats of the Company which were being used prior to the 27th July 2000. By mentioning the above facts and circumstances representative of the management has prayed for answering the reference against the workman.

4. The workman has filed a comprehensive rejoinder. He has challenged the stand of the management by further stating that he has performed his duty from the 24th July 2003 to the 13th June 2005 and the documents filed by him are genuine documents. He has further stated that the other three persons who are working along with him under the management are still continuing and the present claim of the management that his service is nothing but a case of non-renewal of contract is false and baseless. Regarding theft of different items from the factory premises, it is the case of the workman that the conclusion arrived by the Investigating Officer is quite clear and he was not made a party to it, as a result there is no point of giving importance to the theft matter. So far his termination is concerned, he has also challenged the plea of the management that it is a clear case of voluntary abandonment of service and according to him, he was terminated from service without any good reason and by not complying the statutory requirements, as a result, he be reinstated in service with full back wages.

5. By taking the note of the pleadings of the parties, the following issues are settled in this case:—

ISSUES

- (i) "Whether the workman was serving under the management from the 24th July 2003 as claimed by the workman or from the 1st January 2005 as propounded by the management ?
- (ii) Whether the workman abandoned the job of his own wish ?
- (iii) Whether the termination of the workman as alleged is a termination as visualised under the Industrial Disputes Act or it is an exception to it provided under Section (oo) (bb) of the I. D. Act?
- (iv) Whether the termination of services of Shri Pravat Kumar Mohanty, Watchman by M/s Pioneer Metal (I) Pvt. Limited, Industrial Estate, Jharsuguda with effect from the 13th June 2005 is legal and justified ?
- (v) If not, to what relief the workman is entitled to ?"

6. In order to suffice his claim the workman is only examined from his side and he has filed a good number of documents which are marked Ext. A to I from his side to suffice his claim.

The representative of the management is examined as M. W. 1 and he has also examined Chandrabhanu Sahu and Sailesh Singh as M. Ws. 2 and 3 respectively to buttress his claim. To add to this, Exts. 1 to 6 are filed to give strength to the oral evidence adduced by him. Keeping the oral evidence of the parties and the documents filed by them in view, I will deal with issues settled in this case.

FINDINGS

7. Issue No. (i)—The workman has claimed in his claim statement and also in his evidence in Court that he was serving under the management from the 24th July 2003. In the written statement and also in his evidence the representative of the management has denied it. According to the management, he had joined his duty with effect from the 1st January 2005. In order to resolve the dispute the oral and documentary evidence of the parties are to be weighed in the scale of law. As per law, the burden of proof of a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. So it is for the person putting forward the claim to establish the facts and circumstances supporting his claim. The workman has adduced his evidence orally and also filed documents which are marked Exts. A to L to substantiate his case. According to him he was appointed as a Watchman with effect from the 24th July 2003, by oral order of the Director of the management and

during his incumbency, the Director had told him that his employment would be permanent w.e.f. the 1st January 2005. The workman has not filed any appointment order, but he has filed xerox copies of attendance cards which are marked Exts. C to F and from H to K. The representative of the management has cross-examined the workman. It is elicited from him that at the time of the oral appointment some employees of the management were present. Admittedly none of them have been examined from the side of the workman. In this connection it may be mentioned here that it is not possible on the part of the workman to bring some employees of the management to support his case. But the xerox copies of the attendance cards are to be given weightage as the Supervisor who is still working under the management (M. W. 1) has accepted the same by adducing evidence that he has put his signature in Exts. H, J and K and also in the body of Exts. C, D, E and F. According to him, he had left the management from the 1st August 2002 and then joined again on the 1st January 2005. It is hard to believe that the Supervisor who is examined as the Management Witness No. 2 in this case had left the service on the 1st August 2002 as because in such situation there is no scope for him (management witness No. 2) to put his signatures in the body of Exts. C, D, E, F, H, J and K. With a view to fill up the lacuna, M. W. 2 has come up with such a version. There is no reason to believe him in that regard as the question of leaving the management from the 1st August 2002 is propounded newly. Even the plea of the management that M. Ws. 2 and 3 have joined along with the workman was not put forth before the conciliation officer and even there is no whisper of word in this regard in the pleading. It may be pertinent to mention here that in the written statement there is no mention that the workman joined his duty along with M. Ws. 2 and 3 and another person namely, Ajit Kumar Nayak. These things are put forth from the side of the management during course of trial and as per law such additions which are important to decide the crux of the issue cannot be taken into consideration as those are not available in the body of the pleading. The representative of the management is figured as M. W. 1 during the course of cross-examination, he has stated that the appointment was temporary in nature and it was for a period of six months. But very surprisingly this fact is not stated during the conciliation proceeding. Rather before the Conciliation Officer it is put forth that the termination is in relation to the theft occurred inside the factory premises. As it appears the Investigating Agency gave a clean chit to the workman, so far the theft case is concerned. By taking note of the oral evidence of the workman and the documents put forth during conciliation proceeding it can be safely said that the termination relates to the theft of Company properties occurred on the 12th/13th June 2005 night. The failure report of the Conciliation Officer if taken into account by keeping in view to the oral and documentary evidence adduced by the workman it can be said that the retrenchment purely relates to the theft matter. It is also forthcoming from the evidence on record that the workman was attached to the management with effect from the 24th July 2003. So the above issue is answered in support of the workman.

8. *Issue No. (ii)*—It is the specific plea of the management that the workman had left the job of his own wish. In this connection M. W. 1 has stated that he absconded from the factory premises after knowing that Police had started investigation of the theft case. Even it is believed, there is no legal weightage in such abscondance as because even an innocent person with an apprehension of Police torture prefers to abscond. But in absence of specific evidence in this regard there is no legal strength in the faint evidence adduced by the M. W. 1, that the workman absconded from the factory premises. No good cause is shown as to why the workman will abscond and abandon his job when there is nothing against him, so far the theft of Company properties are concerned. It is the specific plea of the management before the Conciliation Officer that he had left the factory premises without informing the occurrence to the authority. But the said aspect cannot be believed as there was prompt lodging of F.I.R. by the management and early initiation of investigation by the local Police.

It is forthcoming from the report of the Conciliation Officer (Ext. E) that the management insisted that his case will be considered if the investigating agency clears him from the theft case. So after attaching judicial note to the documents as referred above and by taking note of the oral evidence adduced by the parties, I am of view that there is no scope for the workman to abandon his job. Even if it is believed for the sake of argument, then what made the management not to issue a letter to him intimating the consequences of his absconce. In absence of the same the theory of voluntary abandonment of service by the workman cannot be believed. So the above issue is also answered against the management and in support of the workman.

9. *Issue Nos. (iii) & (iv)*—Both the issues are taken up together as those are interlinked. According to the management the termination of service of the workman is due to non-renewal of the contract of employment between the employer and employee concerned on expiry of the contract period and the stipulations available in Section 2 (oo) (bb) of the I. D. Act will apply and it cannot be termed as a retrenchment. I have already disbelieved the plea of the management that the employment is from the 1st January 2005 and it is for a period of six months. My opinion in this regard is that he was in employment under the management with effect from the 24th July 2003. To buttress their claim, the management has filed Ext. 4 which is a memorandum of appointment. On perusal of the Ext. 4 it is forthcoming that the workman along with three others were given appointment with effect from the 1st January 2005. If it is believed, then it is the incumbent duty of M. W. I to produce the joining report of the workman to suffice that he had joined on the 1st January 2005. To prove this aspect, emphasis is given from the side of the management to Exts. 5 and 6. According to the workman the Director of the Company took his signatures on some forms. The way the management had functioned in relation to the workman, the possibility of playing hide and seek with him (workman) and utilising such forms by showing that he had joined on the 1st January 2005 cannot be ruled out. As such the plea that it is a case of non-renewal of contract and not retrenchment cannot be accepted.

10. In this connection it is pertinent to mention that the post of (Watchman) is a permanent one and cannot be said that it is a seasonal one. It is the specific case of the workman that the other employees who were by then working under the management are still working and he was only retrenched by the management. It can also be said that the post of retrenchment is not linked with any specific work as because it is a routine matter and is to be taken up on regular basis. So, for all purposes the retrenchment is for the simple reason that there was theft on the 12/13th June 2005 night and by holding the workman guilty in relation to it, he was terminated from service. No enquiry was conducted in this regard and even the statutory benefits were not extended to him. In such situation the termination can be held to be illegal. As per law whether the retrenchment is found to be illegal and invalid for non-compliance of the mandatory requirements of the statute it is imperative for this Court to award the relief of reinstatement with full back wages. But there are judicial pronouncements that by showing good reasons the back wages can be pruned. Admittedly in this case the workman had not worked right from the date of termination. Though it is due to the fault of the management, but for extending pecuniary benefits, such act of the workman should be taken into account. Though there is no pleading about the employment of the workman during the intervening period, but the same cannot be fully ruled out. It is hard to believe that from that day the workman is lying vacant. So on totality of facts and circumstances as narrated above I am of view that the back wages is limited to half of the legal entitlements of the workman.

11. *Issue No. (v)*—In view of my discussion appended above the workman is entitled to get 50% back wages. As the statutory compliances were not meted from the side of the management and as the termination was done in a illegal manner, so the workman is to be reinstated in service. Hence the following Award: —

AWARD

The reference is answered on contest in support of the workman and against the management. The termination of service of Shri Pravat Kumar Mohanty, Watchman by M/s Pioneer Metal (I) Pvt. Ltd., Industrial Estate, Jharsuguda with effect from the 13th June 2005 is held to be illegal and unjustified. The management is directed to reinstate the workman in service with 50% back wages. The computation of back wages should be made from the 13th June 2005 and the quantum of salary is to be taken into account as per the admission of the management that he was getting Rs. 2,000 per month at the relevant period. The plea of workman that he was working for 12 hours and accordingly his back wages should be fixed at enhanced rate cannot be taken up in this proceeding as the jurisdiction of this Court is to adjudicate the illegality and justifiability of the termination order and not to compute the back wages in the standard claimed by him (workman). The management is directed to pay the back wages to the workman within one month from the date of the publication of the Award in the Gazette, failing which the workman is entitled to get the entire dues with interest @ 10% per annum (Simple interest) from the date of Award till the actual payment is made.

Drafted and corrected by me,

P. K. MAHAPATRO

18-8-2007

Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO

18-8-2007

Presiding Officer
Labour Court, Sambalpur

By order of the Governor

N. C. RAY

Under-Secretary to Government

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